

Food and Nutrition Service, USDA

§ 283.12

such decision and is not subject to further administrative or judicial.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. Prehearing conferences may be conducted telephonically. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

- (1) An outline of the appeal or defense;
 - (2) The legal theories upon which the party will rely;
 - (3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and
 - (4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.
- (b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

- (1) The simplification of issues;
- (2) The necessity of amendments to pleadings;
- (3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
- (4) The limitation of the number of expert or other witnesses;
- (5) Negotiation, compromise, or settlement of issues;
- (6) The exchange of copies of proposed exhibits;

(7) The nature of and the date by which discovery, as provided in § 283.12, must be completed;

(8) The identification of documents or matters of which official notice may be requested;

(9) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(10) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* (1) A prehearing conference will not be stenographically reported unless so directed by the ALJ.

(2) Any party to the appeal may, upon motion, request the ALJ to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

(e) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the ALJ elects to make a statement on the record at the hearing summarizing the actions taken.

§ 283.12 Discovery.

(a) *Dispositions.*—(1) *Motion for taking deposition.* Only upon a finding by the ALJ that a deposition is necessary to preserve testimony as provided in this subparagraph, upon the motion of a party to the appeal, the ALJ may, at any time after the filing of the answer, order the taking of testimony by deposition. The motion shall set forth:

- (i) The name and address of the proposed deponent;
- (ii) The name and address of the person (referred to hereafter in this section as the “officer”) qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;
- (iii) The proposed time and place of the examination, which shall be at least 15 days after the date of service of the motion; and
- (iv) The reasons why such deposition should be taken, which shall be solely